

**BEFORE THE STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI**

In the Matter of the Application of:

Malcolm D. Morris

**ORDER ISSUING A PROBATED PRENEED AGENT
REGISTRATION**

The State Board of Embalmers and Funeral Directors (the "Board"), pursuant to Section 324.038, RSMo¹, issues this order granting a **PROBATED PRENEED AGENT REGISTRATION** to Malcolm D. Morris ("Morris" or "Licensee") who has registered his address with the Board at 11525 Blue Ridge Boulevard, Kansas City, Missouri 64134.

As set forth in Section 324.038, RSMo, Licensee may submit a written request for hearing to the Administrative Hearing Commission seeking review of the Board's decision set forth in this Order. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date the Board mails this Order to Licensee. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P. O. Box 1557, Jefferson City, Missouri 65102-1557. Any such request should set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to Licensee's profession. If such

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

review is requested, a hearing shall be held pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing Commission will preside over the hearing. The hearing will be on the record and recorded by a court reporter. At the hearing, Licensee shall have the right to present testimony, call witnesses on his behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board and make legal argument to the Commission. Following the hearing, the Administrative Hearing Commission will issue an order including findings of fact, conclusions of law and a decision based on the evidence admitted at the hearing. A copy of the Administrative Hearing Commission's order will be delivered to the parties. Chapter 536, RSMo, sets forth the procedures for review of the order of the Administrative Hearing Commission.

If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Section 324.038.2, RSMo. Should Licensee make written request for review of this Order, the terms and conditions of this Order shall remain in full force and effect unless and until such time as the Administrative Hearing Commission or reviewing court orders otherwise.

Relevant Statutes

1. Section 324.038, RSMo, authorizes the Board to issue a registration subject to probation in lieu of denial and states:

1. Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.

3. If the probation imposed includes restrictions or limitations on the scope of practice, the license issued shall plainly state such restriction or limitation. When such restriction or limitation is removed, a new license shall be issued.

2. Section 333.325, RSMo, requires a preneed agent to obtain a registration from the Board to lawfully "sell, negotiate, or solicit the sale of preneed contracts" and states:

1. No person shall sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of, a seller unless registered with the board as a preneed agent except for individuals who are licensed as funeral directors under this chapter. The board shall maintain a registry of all preneed agents registered with the board. The registry shall be deemed an open record and made available on the board's website.

2. An applicant for a preneed agent registration shall be an individual who shall:

- (1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license;
- (2) Be eighteen years of age or older;
- (3) Be otherwise eligible for registration under section [333.330](#);
- (4) Have successfully passed the Missouri law examination as designated by the board;
- (5) Provide the name and address of each seller for whom the applicant is authorized to sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of.

3. Each preneed agent shall apply to renew his or her registration on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section [324.001](#). A registration which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

- (1) File an application for renewal on a form established by the board by rule;
- (2) Pay a renewal fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license renewal; and
- (3) Provide the name and address of each seller for whom the preneed agent is authorized to sell, negotiate, or solicit the sale of preneed contracts for or on behalf of.

4. Any funeral director acting as a preneed agent shall be required to report the name and address of each preneed seller for whom the funeral director is authorized to sell, negotiate, or solicit the sale of preneed contracts as part of their biennial renewal form. Each funeral director preneed agent shall be included on the board's registry.

5. Any registration which has not been renewed as provided by this section shall expire and the registrant shall be immediately removed from the preneed agent registry by the board. A registrant who fails to apply for renewal may apply for reinstatement within two years of the renewal date by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board.

3. Section 333.330, RSMo, authorizes the Board to deny an application for a preneed agent registration and states, in relevant portion:

1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

* * *

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any

person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

* * *

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter regulating preneed who is not licensed or registered and currently eligible to practice thereunder;

* * *

(14) Violation of any professional trust or confidence;

Parties and Background

4. The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, and vested with the authority to execute and enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.

5. Malcolm D. Morris is an individual who has registered his address with the Board as 11525 Blue Ridge Boulevard, Kansas City, Missouri 64134.

6. Morris holds funeral director license number 006637, that was current and active at all times relevant to this Order except for when it lapsed on May 31, 2014 and was reinstated on July 7, 2014.

7. Morris previously held preneed agent registration number 201015735 until it lapsed on October 31, 2014 and was not reinstated.

8. Morris submitted to the Board his "Application for Preneed Agent/Funeral Director" to the Board that he signed before a notary public on April 30, 2015 (the "Application").

9. Morris is over the age of 18 years.

10. Morris has met the statutory requirements for registration.

Basis for Probation

11. Between June 1, 2014 and July 6, 2014 Morris allowed his funeral director license to lapse.

12. Before June 1, 2014, Morris had been registered with the Board as a preneed agent as a funeral director per the provision of Section 333.325.4, RSMo.

13. When Morris' funeral director license lapsed, his preneed agent registration lapsed as well.

14. By letter dated June 17, 2014, the Board notified Morris that his preneed agent registration lapsed by virtue of his funeral director license lapse and that he could not practice as a preneed agent until he was properly registered as such.

15. The Board reinstated Morris' funeral director license on July 7, 2014.

16. After July 7, 2014 and until the date of this Order, Morris has not been registered with the Board as a preneed agent.

17. Morris engaged in the activity of a preneed agent during the time his preneed agent registration was lapsed.

18. The Board has cause to deny Morris's application for a preneed agent registration pursuant to Section 333.330.2 (6), (7), (11), and (14), RSMo.

19. The Board finds that issuance of a probated preneed agent registration, subject to certain terms and conditions, in lieu of denial, will ensure protection of the public.

Issuance of Probated License Subject to Terms and Conditions

The Board, in lieu of denial, hereby issues a preneed agent registration to Malcolm D. Morris, on **PROBATION** for a period of **ONE YEAR** (the “Disciplinary Period”) subject to the terms and conditions contained in this Order and set forth below.

Terms and Conditions of the Disciplinary Period

20. Licensee shall comply with the following terms and conditions of probation during the Disciplinary Period:

- a. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with his current and active e-mail address;
- b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;

- c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
- e. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. These compliance reports shall contain all other information required by this Settlement Agreement and shall be filed on forms supplied by the Board, if Licensee fails to receive the form from the Board, Licensee shall have the duty to contact the Board to request the form. Licensee shall complete each compliance report truthfully, completely and accurately;
- f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- g. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and

registrations issued by the Board current and active including not allowing any license to be suspended for failure to comply with any revenue law of the state;

- h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation;
- i. Licensee shall provide any death care employer with a copy of this Order within 5 working days from the date of receipt of this Order and within 5 working days from the date of any new employment; and,
- j. Licensee shall not serve as the supervisor of any funeral director apprentice without the express written consent of the Board. If Licensee seeks to supervise an apprentice, Licensee shall submit a written request to the Board that includes the name and address of the potential apprentice and a description of Licensee's ability to properly supervise an apprentice. No such apprenticeship shall commence until the Board has given its consent for Licensee to supervise the apprentice.

21. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's preneed agent registration shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any

term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Licensee's preneed agent registration.

22. The Board shall enter no order imposing further discipline on Licensee's preneed agent registration without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

23. If the Board determines that Licensee has violated a term or condition of this Order, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

24. If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, may impose further discipline on Licensee's preneed agent registration. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

25. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

IT IS SO ORDERED.

Dated: 12.23.2015

Sandy Sebastian
Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors